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C O N F I D E N T I A L SECTION 01 OF 02 HARARE 000946

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NSC FOR SENIOR AFRICA DIRECTOR J. FRAZER
LONDON FOR C. GURNEY
PARIS FOR C. NEARY
NAIROBI FOR T. PFLAUMER

E.O. 12958: DECL: 12/31/2013

TAGS: [PGOV](#) [PHUM](#) [PINR](#) [ZI](#)

SUBJECT: STATE WITNESSES HELP DEFENSE AS TSVANGIRAI TREASON TRIAL RESUMES

REF: A. HARARE 568

[B](#). HARARE 484

[C](#). HARARE 360

[D](#). HARARE 313

[E](#). HARARE 250

Classified By: Political Officer Audu Besmer for reasons 1.5 b/d

Summary:

[1](#). (C) The treason trial of MDC President Morgan Tsvangirai, MDC Secretary General Welshman Ncube, and MDC Shadow Minister of Agriculture Renson Gasela resumed on May 12 for its ninth week after a month-long recess. The Defense intends to move for acquittal by the end of May, and the judge will likely weigh carefully his own career longevity in his decision.
End Summary.

[2](#). (C) The treason trial of MDC President Morgan Tsvangirai, MDC Secretary General Welshman Ncube, and MDC Shadow Minister of Agriculture Renson Gasela resumed on May 12 for its ninth week after a month-long recess. According to lead defense attorney George Bizos, based on the State's weak evidence presented so far, the defense intends to move for dismissal by the end of May; on May 15 Tsvangirai said he was confident that he would be acquitted. Another defense lawyer, Innocent Chagonda, was also confident this week that judge Garwe would find it difficult to convict Tsvangirai.

[3](#). (U) On May 12 and 13, the defense continued its cross-examination of Assistant Police Commissioner Moses Magandi. The State's star witness Ari Ben Menashe previously said that he had informed Magandi, while they were traveling to England for a meeting with Tsvangirai, that he was going to the DRC later to meet with Rupert Johnson. But Magandi denied this week that Menashe told him of his trip to the DRC. Bizos also questioned Magandi on whether he had informed his superiors that the videotape did not show Tsvangirai saying that he wanted to "assassinate" President

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Mugabe. Magandi admitted that he did not. When Bizos asked Magandi if there were any special identifying marks on the videotape and the audiotape that could be used to confirm that the tapes in front of them were the correct tapes, Magandi admitted that there were no special marks. However, he refused to admit that it would have been easy for anyone to change the tapes.

[4](#). (U) The prosecution then introduced the next state witness, Central Investigation Department (CID) Officer Stephen Mutamba. Although Mutamba admitted that the quality of the audiotape was poor, except for one part, he still managed to read from a police transcript what the police believed Ben Menashe to have said at the second London meeting. During his cross-examination by the defense, Mutamba admitted that he had only been looking for evidence that would incriminate Morgan Tsvangirai and ignored evidence that Tsvangirai had not said anything about "assassinating" Mugabe.

[5](#). (C) In circumstances where it was obvious that Ben Menashe had lied, Magandi and Mutamba preferred to say that they did not know what Ben Menashe had said. Based on misstatements Magandi made, the state appeared to have coached the second witness, Mutamba, and he was better prepared for cross-examination.

[6](#). (U) Although the attendance in court was poor at first, toward the end of the week it increased steadily. On May 12, nine members of the MDC women's league were arrested after they were denied entry to the High Court allegedly because they were not dressed appropriately; they were wearing MDC t-shirts.

Comment:

[7](#). (C) Both witnesses' testimony appeared to benefit the

defense more than the prosecution even though they were State witnesses. Under apolitical circumstances we would be confident of acquittal. However, the circumstances are not apolitical. The central questions the GOZ and Judge Garwe faces are whether there is any basis under the law for a conviction, what would be the political fallout of convicting Tsvangirai with such flimsy evidence, and whether the Supreme

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Court would overturn the conviction (which the defense would surely appeal). Judge Garwe, current Judge President of the High Court, must also be pondering if his career will outlast the current regime, and the potential damage of a conviction for his own reputation. End Comment.

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